Appl. No. 09/842,754
Corrected Appeal Brief dated December 19, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.   : 09/842,754   Confirmation No.:   8266
Applicant(s): Richard A. Pineau et al.
Filed   : April 26, 2001
Title   : METHOD AND APPARATUS FOR REMOTE
                : PROCESSING AND SHARING DIGITAL
                : IMAGES
TC/A.U.   : 2153
Examiner   : Sean M. Reilly

Docket No. : 8410
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CORRECTED APPEAL BRIEF

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Sir:

This is a Corrected Appeal Brief submitted in
response to the Notification of Non-Compliant Appeal
Brief mailed December 4, 2006 in the above-identified
application for Letters Patent.

REAL PARTY IN INTEREST

The real party in interest in this appeal is
Polaroid Corporation, a corporation organized and
existing under the laws of the State of Delaware, of
1265 Main Street, Waltham, MA 02451.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and
interferences.

STATUS OF CLAIMS

1.   Claims 1 - 15, 19 and 20 have been
rejected as being unpatentable over the references
applied in support of the rejections.

The rejections of Claims 1 - 15, 19 and 20 are
being appealed.

2.   Claims 26 - 28 have been withdrawn from
consideration pursuant to a requirement for Restriction.

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STATUS OF AMENDMENTS

Appellants did not file an amendment after the final Office action and elect to prosecute this appeal on the basis of the claims which were in the application prior to the final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1 and 15 are independent.

I.   Claim 1 is directed to a method for transmitting to a remote node (5-Fig. 1) in a data communications network, digital images from an image data source. A customer (10-Fig. 1) is provided with a specific communication apparatus (2-Fig. 1) having identifying information (step 100-Fig. 2A) stored in a memory thereof (the last six lines of page 7 through the second line of page 8).

One or more images are accessed and transferred (step 115-Fig. 2A) from the image data source (1-Fig. 1) to the communication apparatus (page 8, lines 3-5).

The closest entry point into the data communications network is determined (step 118-Fig. 2A; page 8, lines 9-10). Information is automatically sent from the communications apparatus (2-Fig. 1), via a toll free link, to the data communications network (page 11, lines 3-14). The data network automatically recognizes

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the location of the communication apparatus, compares
the location to a stored list of network entry points,
selects the closest entry point and transmits back to
the communications apparatus the contact information for
the selected closest entry point (page 11, lines 6 -
14).

The communications apparatus automatically
uses the provided contact information to establish
communication with the data network via the closest
entry point. The image or images and the identifying
information are transmitted, through the closest entry
point, to a remote node (5-Fig.1) of the data
communications network (page 12, first full paragraph).

The image or images and the identifying
information are received at the remote node of the data
communication network.

II. Claim 15 is directed to a communications
apparatus (2-Fig. 1) which includes:

means for accessing an image or images (step
310, Fig. 4) from an image data source (1-Fig. 1)(page
13, lines 9-11);

means for storing identifying information
(230,250-Fig. 3) in a storage component of the apparatus
(paragraph bridging pages 9 and 10);

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means for automatically determining a closest
entry point into the data communications network
(processor 200-Fig. 3) which includes:

means for automatically sending information
(220-Fig. 3) via a toll free link to the data
communication network (page 11, lines 3-6);

means for automatically recognizing the
location of the communication apparatus, comparing the
location to a stored list of entry points, selecting the
closest entry point and transmitting the contact
information for the selected entry point to the
apparatus (230,240,250-Fig. 3; the paragraph bridging
pages 11 and 12);

means for automatically using the provided
contact information to establish communication, through
the entry point, with a remote node (5-Fig. 1; the first
full paragraph of page 12); and

means for transmitting the image(s) and the
identifying information to the remote node (page 12,
first full paragraph).

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GROUNDS OF REJECTION TO BE REVIEWED

I. Rejection of claims 1 - 5, 7 - 15, 19 and 20 under 35 U.S.C. § 103(a)

Whether the subject matter of claims 1 - 5, 7 - 15, 19 and 20 is unpatentable under 35 USC § 103(a) over International Patent Application Publication No. WO 00/01138 ("Steinberg et al.") in view of U.S. Patent No. 6,795,852 B1 ("Kleinrock et al.").

II. Rejection of claim 6 under 35 U.S.C. § 103(a)

Whether the subject matter of claim 6 is unpatentable under 35 USC § 103(a) over Steinberg et al. and Kleinrock et al. and further in view of U.S. Patent No. 5,995,239 ("Kagawa et al.").

ARGUMENTS

I. Argument with Respect to the Rejection of Claims 1 - 5, 7 - 15, 19 and 20 Under 35 U.S.C. § 103(a)

Appellants' invention provides an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point. The method of appellants recited in claim 1 requires the recited steps including the step of automatically determining a closest entry point into the data communications network including the steps of

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(a)   automatically sending information from said
communication apparatus, via a toll free link, to the
data communication network to ascertain the location of
said communication apparatus;

(b)   at the data network, automatically recognizing
the location of said communication apparatus, comparing
the location to a stored list of network entry points
and selecting the closest entry point, and transmitting
back to said communication apparatus the contact
information for the selected closest entry point; and

(c)   at said communication apparatus, automatically
using the provided contact information to establish
communication with the data network via the closest
entry point;

The automatic determination of the closest
entry point in the present invention involves
automatically sending information over a toll free link
to the server to ascertain the location of the
communication apparatus, at the network, automatically
recognizing the location, comparing the location to list
of network entry points, selecting the closet entry
point and sending the contact information back to the
communication apparatus which automatically uses the
contact information to establish communication with the
data network via the closest entry point.

Independent apparatus claim 15 includes means
for carrying out such functions.

In support of the rejection, the Office Action
asserts that Steinberg et al. discloses all of the

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claimed steps or elements except it "... does not
specifically teach automatically determining a closest
entry point into the data communications network." Thus,
it is acknowledged that Steinberg et al. does not teach
or suggest a critical element of the claimed method and
apparatus of appellants.

The Office Action relies on Kleinrock et al.
to provide the teaching which is missing in the primary
reference. At page 3 of the Office Action it is stated
that

> Nevertheless it is well known in the art
> at the time of the invention to automatically
> determine the closest entry point into a
> data communication network, as evidenced by
> Kleinrock. In an analogous art, Kleinrock
> disclosed an automatic network connection
> system which...:

Reference is made to the disclosure at column 4, lines
23 - 32.

> The Office Action concludes that

> It would have been obvious to one of ordinary
> skill in the art at the time of the invention
> to incorporate the automatic connection system
> disclosed by Kleinrock, within Steinberg's
> system so users can be automatically connected
> to the most appropriate phone number and
> thereby avoid enormous long distance telephone
> charges (Kleinrock Col 1, lines 25 - 33).

Appellants submit that this conclusion is based on an
improper combination of the prior art references.

In order to properly support a rejection under
Section 103 the reference(s) must place the claimed
subject matter in the possession of the general public.
The reference(s) must provide some teaching or

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suggestion which would enable those skilled in the art,
in conjunction with their knowledge of the state of the
art, to know of the claimed invention. Here the
references do not provide such a teaching or suggestion.

Kleinrock et al. teaches a method wherein a
user calls one telephone number from a computer
communication connection and the call goes into a
computer having a database of the access numbers of many
service providers. The receiving computer identifies
where the user is calling from via an identifying
feature and then determines the most appropriate, for
example, the cheapest or most proximal number the user
should use to connect to the Internet including the cost
of the phone call and of the service provided by the
service providers.

The method of Kleinrock et al. is remote from
that of appellants and also from that of Steinberg et
al. In essence, this reference provides a method for
connecting a user to a computer information network via
a computer network. Kleinrock et al. does not anywhere
suggest anything with respect to an apparatus and method
that enables the users of digital image acquisition
devices to obtain hard copy output from or to share the
digital images by transmitting the images to a remote
node of a communication network through an automatically
determined closest entry point.

Since the methods of the references are remote
from each other, there is no suggestion to be found in
either reference to combine their teachings in the
manner described in the Office Action to support the

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rejection. It is acknowledged that Steinberg et al.
does not suggest a critical feature of appellants'
claimed invention. Kleinrock et al. does not suggest
automatic determination of the closest entry point
within the context of appellants' claimed method and
system.

For all the foregoing reasons, the combination
of Steinberg et al. and Kleinrock et al. does not
support the rejection of claims 1 - 5, 7 - 15, 19, and
20 under 35 U.S.C. §103(a). The USPTO has failed to
sustain the burden of showing that the claimed subject
matter is unpatentable.

II. Argument with Respect to the Rejection of Claim 6 Under 35 U.S.C. § 103(a)

Claim   6   has   been   rejected   as   being
unpatentable under 35 USC § 103(a) over Steinberg et al.
and kleinrock et al. and further in view of Kagawa et
al.

Claim 6 is dependent upon claim 1 and recites
the embodiment wherein the transmission of the image or
plurality of images from the apparatus to the remote
node of the communication network includes recited steps
(A) - (G).

Claim 6 is patentably distinguishable over
these references for the same reasons discussed above
with respect to Steinberg et al. and Kleinrock et al.
and further because Kagawa et al. does not teach or
suggest critical features of appellants' claimed subject
matter including the step of automatically determining a

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closest entry point into the data communications
network.

In support of this ground of rejection the
Office Action states (see the first paragraph on page 5)
that

> ...Steinberg does not specifically recite the
> plurality of transmission rates of data images
> between the system and the remote node.
> However, Kagawa teaches that when data is
> transmitted successfully the system increases
> the transmission rate to increase the mean
> transmission rate.

The Office Action (see page 5) concludes that it
"...would have been obvious to one of ordinary skill in
the art to be motivated to introduce an alternative or
obvious modification of Kagawa teachings to enhance the
communication rate and reliability of data transmission
as disclosed in col. 12, lines 14 - 16."

Appellants' submit that this conclusion is not
justified based on the disclosures of the references.
Steinberg et al. and Kleinrock et al. have been
discussed in detail above. Kagawa et al. discloses a
facsimile apparatus for sending and receiving image
data. The disclosure of Kagawa et al. is remote from
appellants' claimed subject matter and does not provide
any suggestion, individually or in combination with the
other references, that would teach appellants' claimed
subject matter according to the requirements of Section
103.

In addition, there is no justification for
taking from Kagawa et al. only a specific teaching out
of the context of the overall disclosure of the

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reference and combining that specific teaching with the other references. Doing so represents impermissible reconstruction of the prior art.

Therefore the combination of Steinberg et al., Kleinrock et al. and Kagawa et al. does not teach the subject matter of claim 6 within the meaning of Section 103.

CONCLUSION

For all of the foregoing reasons the 35 USC § 103 rejections should be reversed and claims 1 - 15, 19 and 20 allowed.

Respectfully submitted,

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CLAIMS APPENDIX

Claims On Appeal

Claim 1. A method of transmitting to a remote node in a data communications network, digital images from an image data source, comprising the steps of:

providing the customer a specific communication apparatus, said communication apparatus having identifying information stored in a memory thereof; and

accessing and transferring one image or a plurality of images from the image data source to said communication apparatus;

automatically determining a closest entry point into the data communications network including the steps of;

(a) automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

(b) at the data network, automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

(c) at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point;

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transmitting said image or plurality of images and said identifying information, through the closest entry point, to a remote node of the data communications network; and

receiving, at the remote node of the data communication network, said image or plurality of images and said identifying information.

Claim 2.   The method of claim 1 wherein the identifying information is preset in the memory in the apparatus.

Claim 3.   The method of claim 1 wherein in automatically determining said entry point GPS information is used.

Claim 4.   The method of claim 2 wherein in automatically determining said entry point caller ID information is used.

Claim 5.   The method of claim 1 wherein the communication network is the Internet, the closest entry point is an Internet Service Provider (ISP) and the remote node is a server.

Claim 6.   The method of claim 1 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network comprises the steps of:

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(A)   constructing from each image at least one
of a plurality of packets of information wherein the
image is comprised of the totality of packets;

(B)   transmitting a packet at a given data
rate;

(C)   determining whether the transmission was
successful; and

(D)   performing the following steps, if the
transmission is successful:

increasing the data rate,

determining if the data rate exceeds a select
maximum data rate;

setting the data rate to the maximum data
rate, if the data rate exceeds the select maximum data
rate;

(E)   decreasing the data rate, if the transmission
was not successful, until successful transmission is
achieved;

(F)   transmitting a next packet; and

(G)   repeating steps (B) through (F) until
the totality of packets is transmitted.

Claim 7. The method of claim 1 wherein the
transmission of the image or plurality of images from
the apparatus to the remote node of the communication
network further comprises the steps of:

detecting an interrupting signal; and

interrupting the transmission upon positive
detection of the interrupting signal; and

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re-attempting transmission after a waiting period
following an interruption.

Claim 8.   The method of claim 7 wherein the
transmission of the image or plurality of images from
the apparatus to the remote node of the communication
network further comprises the steps of:
receiving synchronizing information from the remote
node, at the initiation of a transmission event;
synchronizing the transmission event with the
information received at the remote node.

Claim 9.   The method of claim 1 further comprising
the steps of:
rendering the least one of said images in hardcopy
form at a remote node of the data communications
network.

Claim 10. The method of claim 1 further comprising
the steps of:
rendering the least one of said images in digital
form at the remote node of the data communications
network.

Claim 11. The method of claim 1 further comprising
the step of:
storing said image or plurality of images at a
remote node of the data communications network.

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Claim 12. The method of claim 1 further comprising the steps of:
sharing said image or plurality of images, in at least one of a plurality of image product forms, with at least one of a plurality of recipients.

Claim 13. The method of claim 1 wherein the identifying information is received at the apparatus and stored in the memory in the apparatus.

Claim 14. The method of claim 1 further comprising the step of:
entering image data items into a data structure in a memory at a remote node of the data communications network.

Claim 15. A communications apparatus enabling the transmission to a remote node in a data communications network, of digital images from an image data source and of identifying information, said communications apparatus comprising:
means for accessing one image or a plurality of images from the image data source;
means for storing identifying information in a storage component of said apparatus;
means for automatically determining a closest entry point into the data communications network comprising;

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(a)   means for automatically sending information
from said communication apparatus, via a toll free link,
to the data communication network to ascertain the
location of said communication apparatus;

(b)   at the data network, means for automatically
recognizing the location of said communication
apparatus, comparing the location to a stored list of
network entry points and selecting the closest entry
point, and transmitting back to said communication
apparatus the contact information for the selected
closest entry point; and

(c)   at said communication apparatus, means for
automatically using the provided contact information to
establish communication with the data network via the
closest entry point; and

means for transmitting the image or plurality of
images and the identifying information, through the
entry point, to a remote node of the network.

Claim 19. The apparatus of claim 15 wherein said
means for automatically determining the closest entry
point into the data communications network comprise a
GPS receiver.

Claim 20. The apparatus of claim 15 wherein said
means for automatically determining the closest entry
point into the data communications network utilize
caller ID information.

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EVIDENCE APPENDIX

Appellants have not submitted in the application any evidence pursuant to §§ 1.130, 1.131 and 1.132 of 37 Code of Federal regulations.

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RELATED PROCEEDINGS APPENDIX

There are no decisions by a court or the Board of Patent Appeals and Interferences in any related proceedings.

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